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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,291	01/14/2004	Theodore David Wugoski	P1375US01/210572	4507
24333 7590 06/26/2007 GATEWAY, INC. ATTN: Patent Attorney 610 GATEWAY DRIVE MAIL DROP Y-04 N. SIOUX CITY, SD 57049			EXAMINER MUHEBBULLAH, SAJEDA	
			ART UNIT 2174	PAPER NUMBER
			MAIL DATE 06/26/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/757,291

Applicant(s)

WUGOSKI, THEODORE DAVID

Examiner

Sajeda Muhebbullah

Art Unit

2174

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 28, 35, 42, and 45 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 17, 26, and 36 respectively of U.S. Patent No. US 6,690,392. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both deal with the creation of macros for a convergence system having a remote control as well as a user interface.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 2174

4. Claims 28-32, 35-39, and 42-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Foster (US 6,211,870).

As per claim 28, Foster teaches a method of creating a macro for a convergence system, the convergence system having multiple components, at least one remote control, and at least one user interface other than the remote control (col.4, lines 24-25), the macro comprising multiple commands for operating at least one of the components of the convergence system (col.3, lines 19-20), said method comprising:

identifying at least one remote control command and at least one user interface command for execution in a desired sequence (col.10, lines 65-67, col.11, lines 1-14);
and

assigning the sequence to at least one macro element of the system (col.11, lines 9-14).

As per claim 29, Foster teaches the method, wherein the step of assigning the sequence further comprises assigning the sequence to at least one macro element selected from the group consisting of soft keys and hard keys (col.12, lines 6-11).

As per claim 30, Foster teaches the method, wherein the step of identifying the commands comprises the step of generating the sequence of commands by operation of the user interface (col.11, lines 1-14).

As per claim 31, Foster teaches the method, wherein the step of identifying the commands comprises the step of operating a component of the system by performing a corresponding command and detecting the command associated with such operation (col.12, lines 1-11).

As per claim 32, Foster teaches the method, wherein the convergence system includes the components of a TV tuner, a media player/recorder, and a computer, and wherein the step of identifying the commands includes selecting commands associated with any one of said components and assigning them to a macro element on either the remote control or the user interface (Fig.3; col.11, lines 9-14, lines 36-39).

Claims 35-39 are similar in scope to claims 28-32, and are therefore rejected under similar rationale.

Claims 42-43 are similar in scope to claims 28-29, and are therefore rejected under similar rationale.

Claim 44 is similar in scope to claim 32, and is therefore rejected under similar rationale.

Claims 45-48 are similar in scope to claims 28-31, and are therefore rejected under similar rationale.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 33-34 and 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foster (US 6,211,870) in view of Guillorit (US 2004/0172621).

As per claim 33, Foster teaches the method wherein a sequence of commands is identified for operation of a component (col.11, lines 1-13). However, Foster does not teach the step of identifying the commands comprises monitoring user operations of the

Art Unit: 2174

components of the system to determine at least one sequence of commands associated with such operations. Guillorit teaches a method of creating a macro for convergence systems wherein a user operations are monitored in order to create the macro (Guillorit, para.30-31). It would have been obvious to one of ordinary skill in the art at the time of the invention to include Guillorit's teaching with Foster's method in order to determine operations used frequently by the user to automatically create macros.

As per claim 34, Guillorit teaches the method of claim 33, wherein the assigning step includes prompting a user to assign the sequence of commands determined by the monitoring step to the macro element (Guillorit, para.35).

Claims 40-41 are similar in scope to claims 33-34, and are therefore rejected under similar rationale.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Arling et al. (US 2004/0056789) teaches a method of monitoring user operations and associated it to a key.
- Kiser et al. (US 2004/0181622) teaches a method of creating a macro for a convergence system having a remote and computer interface.

Art Unit: 2174

Communications

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sajeda Muhebbullah whose telephone number is (571) 272-4065. The examiner can normally be reached on Tuesday/Thursday and alt. Mondays from 8:30 am to 5:00 pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine Kincaid, can be reached on (571) 272-4063.

The central fax number for the organization where correspondence for this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sajeda Muhebbullah

Patent Examiner

Art Unit 2174

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